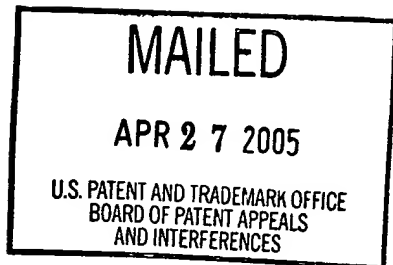


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.



Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MORRIS ANTHONY MOORE and JHEROEN PIETER DORENBOSCH

Appeal No. 2004-1515
Application No. 09/378,586¹

ON BRIEF

Before HAIRSTON, DIXON and SAADAT, Administrative Patent Judges.
SAADAT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1, 3-11 and 13-17. Claims 2, 12, 18 and 22 have been cancelled and claims 19-21 have been indicated by the Examiner as being allowable.

We affirm.

BACKGROUND

Appellants' invention relates to a method for locating a nearby alternate vending machine having a desired product when it

¹ Application for patent filed August 20, 1999.

Appeal No. 2004-1515
Application No. 09/378,586

is not available from a first vending machine. An understanding of the invention can be further derived from a reading of exemplary independent claim 1, which is reproduced below:

1. A method in a first vending machine of a plurality of vending machines for locating a nearby alternate vending machine having a desired product, the method comprising the steps of:

making available to the first vending machine information from nearby ones of the plurality of vending machines for coordinating product availability and vending machine location;

determining, by the first vending machine, that the desired product is no longer available at the first vending machine;

obtaining thereafter, by the first vending machine, the information comprising a location of the nearby alternate vending machine for the desired product; and

conveying by the first vending machine said location to a customer in response to a selection of the desired product by the customer.

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Horne et al. (Horne)	5,091,713	Feb. 25, 1992
Azizi et al. (Azizi)	5,525,967	Jun. 11, 1996
Rosenberg et al. (Rosenberg)	6,418,416	Jul. 9, 2002 (filed Apr. 2, 1999)

Claims 1, 3, 4, 6-8, 10, 11, 13, 14, 16 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Horne and Rosenberg.

Appeal No. 2004-1515
Application No. 09/378,586

Claims 5, 9 and 15 stand rejected under 35 U.S.C. § 103 as being unpatentable over Horne, Rosenberg and Azizi.

We make reference to the answer (Paper No. 13, mailed November 18, 2003) for the Examiner's reasoning in support of the rejection, and to the brief (Paper No. 12, filed August 21, 2003) for Appellants' arguments thereagainst.

OPINION

The Examiner relies on Horne for teaching a vending machine capable of inventory control, but identifies the steps of locating a nearby machine having a desired product as missing in Horne (answer, page 3). The Examiner, however, reasons that the missing limitation is disclosed by Rosenberg as the process of collecting the inventory information obtained when articles are removed from or stacked in the cabinet and communicating the information over a network (answer, page 4). Furthermore, the Examiner asserts that it would have been obvious to search and provide information as to the location of a nearby alternate vending machine having a desired product as suggested by Horne and Rosenberg (id.).

Appellants argue that in response to a product selection by a customer, both Horne and Rosenberg only dispense products but do not convey product location information (brief, page 4).

Appeal No. 2004-1515
Application No. 09/378,586

Appellants assert that although, as depicted in Figure 6, Rosenberg allows a user to view items that match an entered query, it is done to assist the authorized user in selecting one or more of the items and not in response to a product selection by a customer (brief, page 5). Additionally, Appellants argue that Rosenberg merely returns a list of cabinets that contain the article, so the user manually investigates the list to identify and locate a nearby cabinet having the desired product (brief, pages 5 & 6).

In response, the Examiner argues that the product selection in Rosenberg is achieved when the user enters the product name or description as the query information, which conveys to the cabinet the item the user is interested in (answer, page 12). Furthermore, the Examiner characterizes the claimed term "nearby location" as the location of the other cabinets disclosed by Rosenberg (col. 3, lines 56-58) which are on the customer site nearby each other (answer, pages 12 & 13). The Examiner further points out that the authorized users in Rosenberg are also the customers or users who can access the vending machine only upon presentation of acceptable payment (answer, page 13).

As a general proposition, in rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting

Appeal No. 2004-1515
Application No. 09/378,586

a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993) and In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). A prima facie case of obviousness is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to one of ordinary skill in the art. See In re Bell, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed. Cir. 1993); In re Fritch, 972 F.2d 1260, 1266 n.14, 23 USPQ2d 1780, 1783-84 n.14 (Fed. Cir. 1992); Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985). In considering the question of the obviousness of the claimed invention in view of the prior art relied upon, the Examiner is expected to make the factual determination set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. See also In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). However, the motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary

skill in the art, or, in some cases the nature of the problem to be solved. See In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

A review of Horne confirms that the reference relates to an inventory and security monitoring system for a plurality of remotely located vending machines (col. 1, lines 9-12; col. 2, lines 10-19). Rosenberg, on the other hand, describes an inventory management system and method in the form of a distributed network that permits users to browse and search for desired items across multiple enclosures from any location (abstract). According to Rosenberg, an authorized user is provided access to the controller and a portal site from any location and inquires as to the availability of a desired article from a remote location using a network browser (col. 2, lines 17-26). Rosenberg further states (col. 2, lines 26-35) that:

An alternative aspect envisions that the controller may also direct the user to one or more enclosures having a desired article and authorize his or her access and/or establish a direct or distributed network link with at least one supplier.

The disclosed method and system provide access to information and dispensing of articles in ways that are similar in ease-of-use to accessing the World Wide Web. The method and system allow users to browse and search for any article across multiple enclosures from any location.

[Emphasis added.]

Appeal No. 2004-1515
Application No. 09/378,586

Thus, the user, once being authenticated, can identify a desired article and is directed to another location where the enclosure or the cabinet containing the desired article is available.

Based on our findings above, we disagree with Appellants' argument that Rosenberg provides the description of the items to the user when a product has not yet been selected. In fact, when the user identifies an article and inquires as to availability of the desired article and its location, that particular article is actually "selected." Specifically, as reasoned by the Examiner (answer, page 12), by entering a query in the form of a partial item name or a description of the desired item, the user selects that item and indicates it as the desired item.

We also remain unpersuaded by Appellants' argument (brief, pages 5 & 6) that the user is required to manually investigate the list to identify the location of the nearby cabinet. In that regard, we observe that Rosenberg identifies one or more enclosures including the current cabinet location as places where the desired item may be available (col. 6, lines 45-50) and actually directs the user to those cabinets (col. 2, lines 25-29). Therefore, including one of the other enclosure locations and directing the user to those cabinets read on obtaining "the

Appeal No. 2004-1515
Application No. 09/378,586

information comprising a location of the nearby alternate vending machine," as recited in claim 1.

In view of the analysis above, we find the Examiner's reliance on the combination of Horne and Rosenberg to be reasonable and sufficient to support a prima facie case of obviousness. Accordingly, the 35 U.S.C. § 103 rejection of independent claim 1 as well as claims 3, 4, 6-8, 10, 11, 13, 14, 16 and 17, grouped with claim 1 as standing or falling together (brief, page 3), over Horne and Rosenberg is sustained.

Turning now to the rejection of claims 5, 9 and 15 under 35 U.S.C. § 103 as being unpatentable over Horne, Rosenberg and Azizi, we note that the Appellants present no separate or specific arguments as to their patentability, thereby allowing claims 5, 9 and 15 to fall with claim 1. In re Nielson, 816 F.2d 1567, 2 USPQ2d 1525 (Fed. Cir. 1987).

Appeal No. 2004-1515
Application No. 09/378,586

CONCLUSION

In view of the foregoing, the decision of the Examiner rejecting claims 1, 3-11 and 13-17 under 35 U.S.C. § 103 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended 37 CFR § 1.136(a)(1)(iv).

AFFIRMED

KENNETH W. HAIRSTON
Administrative Patent Judge

JOSEPH L. DIXON
Administrative Patent Judge

MAHSHID D. SAADAT
Administrative Patent Judge

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Appeal No. 2004-1515
Application No. 09/378,586

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